



comprises a material selected from the group consisting of polyolefin, polyolefin copolymers, ionomers, and ionomer copolymers. --

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### **REMARKS**

#### **Status of the Claims**

Claims 1-29 are pending. Claims 1-9 and 10-25 stand rejected under 35 U.S.C. §§ 112, second paragraph and 103. Claim 10 is objected to. Claims

Claims 1-3, 8, 12, 13, 15, 18, and 19 are amended. Claims 26-29 are added. The claim amendments are primarily in response to the rejection under 35 U.S.C. § 112, second paragraph and to place the claims in better form. No new matter is added as a result of the above amendments.

#### **Examiner Interview Summary**

Applicant appreciates the time and attention of the Examiner with respect to the several telephonic interviews with Applicant's representative regarding this amendment. In the conversation today, Applicant's representative confirmed that the certain changes to the specification were incorporated into the copy of the specification originally filed with the patent office. Again, the attention of the Examiner is appreciated.

Issues under 35 U.S.C. § 112, Second Paragraph

Claims 1-9 and 11-25 are rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested. However, in view of the above amendments, this rejection is moot. The above claims were amended for clarification purposes, and it is believed that the amendment address the Examiner's concerns regarding the claim language.

Regarding the Examiner's concern about the molecular weight, the Examiner's attention is respectfully directed to Page 4 of the Specification. Page 4 of the Specification discusses molecular weight and molecular weight distributions of the present invention.

The essential inquiry pertaining to compliance with 35 U.S.C. § 112, second paragraph, is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. See MPEP § 2173.02. Please note that it is only a reasonable degree of certainty that is required. If the scope of the invention can be determined by one of ordinary skill in the art from the language of the claims with a reasonable degree of certainty, a rejection under 35 U.S.C. § 112, second paragraph is not appropriate. In re Wiggins, 179 U.S.P.Q. 421 (CCPA 1973).

In view of the above, Applicant respectfully requests that this rejection be withdrawn.

Issues under 35 U.S.C. § 103

Claim 1-9, and 11-25 are rejected under 35 U.S.C. § 103 as allegedly being obvious over Langley, US Patent Number 4,833,010. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Langley discloses a multi-layer chemical barrier fabric that may have a surface film of linear low-density polyethylene.

Langley fails to disclose a chemical barrier comprising a thermoplastic polyolefin with a molecular weight distribution range of from 0.85 to about

0.95. 112,2<sup>nd</sup> & ~~In re Best~~ for inherency

The specification at pages 6-7 states that the thermoplastic olefin materials of the present invention must exhibit certain characteristics which promote the durability of the composite chemical barrier fabric substrate.

In order to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to teach or suggest all of the claim limitations with a reasonable expectation of success. See MPEP § 2142. The teaching of suggestion to make the claim modification must be found in the prior art and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991). The burden is

on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. See MPEP § 2142.

In the present case, the Examiner has failed to provide a specific reason supported by a technical journal or the like that supports his allegation that one of ordinary skill in the art would substitute the low-density polyethylene surface film of Langley for the instant chemical barrier. The Examiner has summarily concluded that the asserted substitutions or modifications are obvious. Such action is contrary to the directive set forth by the Federal Circuit in In re Fine, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988). Additionally, the Board of Patent Appeals and Interferences has specifically required that statements that it is obvious to modify the art be supported by some objective reason to modify the reference. See Ex parte Levengood, 28 U.S.P.Q. 2d 1300 (Bd. Pat. App. & Inter. 1993). *Not understood*

By not providing an objective reason to modify the reference, the Examiner has not carried his burden in establishing a prima facie case of obviousness. As such, Applicant respectfully requests that this rejection be withdrawn.

Even assuming, *arguendo*, a prima facie case of obviousness has been established, such case is rebutted by the comparative test data in the specification.

Page 7 of the specification discusses Responder ® fabric, which is a multi-layered chemical barrier fabric. The Responder fabric has a surface film

of polyethylene laminated to its outer face. Likewise, the multi-layer chemical barrier fabric of Langley has a surface film of linear low-density polyethylene. Example 1 compares a multi-layer chemical barrier fabric with the chemical barrier of the present invention to a multi-layer chemical barrier fabric with the surface film of polyethylene with respect to puncture resistance. As discussed in the specification, puncture resistance of the composite chemical barrier of the present invention was increased by 92.5% with the addition of a five mil TPO coating of the present invention. See Table 3 on page 16 of the specification. Other embodiments described in the specification show increases in puncture resistance of 111% (embodiment 2), 110% (embodiment 4), and 133% (embodiment 5). Such results are clearly greater than expected results with respect to the conclusion of obviousness in the outstanding Office Action. In view of such results, Applicant respectfully requests that this rejection be withdrawn.

From the foregoing, further and favorable reconsideration in the form of a Notice of Allowance is requested and such action is earnestly solicited.

If the Examiner has any questions concerning this Amendment or the Application in general, he is respectfully urged to contact Richard S. Myers, Jr. (Reg. No. 42,022) at the number listed below.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant respectfully petitions for a one-month extension of time for filing a response in connection with the present application and the required fee of \$110.00 is attached hereto.



The Commissioner is authorized to charge any deficiency or credit any overpayment in connection with this Amendment to Deposit Account No. 23-0035.

Respectfully submitted,

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